Impersonation

This Article asks how the law should respond when pranksters or critics impersonate others in social media outlets. Famous individuals from baseball manager Tony LaRusso to philosopher Jürgen Habermas have been victimized by “twittersquatting” when someone else established unauthorized accounts in their names. As the popularity and variety of social media platforms rapidly increase, such incidents will become more common. Indeed, both Facebook and Twitter already have explored offering “verified” accounts to companies and famous individuals as protection against impersonation. Exploring the legal implications of such incidents exposes a number of puzzles within the current regime.

First, what is the nature of the harm and how should that influence a legal response? Legal theories such as trademark infringement or fraud purport to protect the public from deception. Theories such as defamation or privacy uphold the rights of the individual whose identity was hijacked. Is impersonation a greater affront to the duped listener or the displaced victim?

Second, can we learn useful lessons from related past experiences, such as the continuing struggle to define parody in trademark and publicity rights cases, or the development of special rules for domain names? Direct impersonation of another human being differs from copying brand names or using imitation for humorous or critical effect. But the resemblances may make them valuable precedents.

Finally, what ripple effects emanate from the choice of a legal response? Celebrities may rely on intellectual property claims that can circumvent heightened “actual malice” standards in the defamation tort or § 230 protection for intermediaries in cases arising from user behavior. Indeed, a wholesale shift toward such remedies could give celebrities more capacity than ordinary individuals have to control speech involving them—just the reverse of the robust discussion about public figures envisioned in New York Times v. Sullivan and its progeny. Should the legal response to impersonation preserve this balance, and if so, how?